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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/687,797

10/16/2003

David J. Schlyer

BSA 03-14

9848

26302

7590

02/10/2006

BROOKHAVEN SCIENCE ASSOCIATES/  
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EXAMINER

SUNG, CHRISTINE

ART UNIT

PAPER NUMBER

2884

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement filed October 16, 2003 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

\* Electronique Du Scanner PET

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2, 3, 4, 6, 7, 8, 9, 10, 12, 14, 17, 18, 19, 20, 22, 22, 23, 24, 25, 26, 28, 230, 31, 31, 33, 35, 36, 37, 38, 37, 39, 39, 39 and 39, respectively, of

Art Unit: 2884

compending Application No. 10/688577. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of 10/688577 are drawn generally to detection of a human and the claims of the instant application are drawn to animal detection. However, applications of PET detection are interchangeably used between human and animal detection.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### *Conclusion*

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. US Pre Grant Publication 2005/0113667 A1- this reference is a compending application.
- b. US Pre Grant Publication 2005/0215873 A1- this reference discloses an imaging method and apparatus for in vivo detection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine Sung whose telephone number is 571-272-2448. The examiner can normally be reached on Monday- Friday 7-3 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Porta can be reached on 571-272-2444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CS

Christine Sung  
Examiner  
Art Unit 2884

  
**OTILIA GABOR**  
**PRIMARY EXAMINER**